SUPREME COURT, U. S.
MAR 11 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1974

No. 74-1150

MARGARET SIDOR,

Petitioner,

v.

ELEANOR SELLMAN,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

MARGARET SIDOR, *pro se*
Petitioner
11-43 Hoehn Street Apt. 1-B
Lodi, New Jersey

March 1975

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SUPREME COURT OF THE UNITED STATES

October Term 1974

No.

MARGARET SIDOR,
Petitioner

v.

ELEANOR SELLMAN

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Petitioner, Margaret Sidor, respectfully requests that a writ of certiorari issue to review the order and opinion of the New Jersey Superior Court, Appellate Division, entered in this proceeding on September 25, 1974. (Petition for Certification was denied by the Supreme Court of New Jersey on December 11, 1974)

OPINION BELOW

The final order and opinion of the New Jersey Superior Court, Appellate Division, entered on September 25, 1974, is unreported and appears in the Appendix attached as Appendix A. The final order (Appendix B) and opinion (Appendix C) of the Bergen County Court, Probate Division is also unreported.

JURISDICTION

The order of the New Jersey Supreme Court denying petition for certification was entered on December 11, 1974. (See Appendix D infra.) This petition for a writ of certiorari is filed within ninety days of that date. The jurisdiction of this Court is invoked under Title 28 U.S.C. Sec. 1257(3).

In accordance with Title 28 U.S.C. 1654 petitioner is submitting this petition pro se.

CONSTITUTIONAL PROVISION INVOLVED

The Constitution of the United States, Amendment XIV, Sec. 1:

> "...nor shall any State deprive any person of life, liberty or property without due process of law;..."

STATEMENT OF FACTS

Anna Sidor died on June 21, 1973, survived by two daughters, Eleanor Sellman and Margaret Sidor, both residents of New Jersey. An operative will was never found and both daughters applied for letters of administration. Petitioner filed an affidavit setting forth her reasons for opposing Mrs. Sellman's appointment. The trial judge, at a hearing on January 25, 1974, stated that under no circumstances would he appoint

STATEMENT OF FACTS (Cont'd.)

petitioner if respondent Sellman opposed her appointment. Mrs. Sellman never appeared in court to testify nor did she ever submit an affidavit stating her reasons for objecting to petitioner's appointment. The trial court appointed a stranger as administrator and stated in its opinion (Appendix C p. C6):

> "...both of the daughters of decedent must be disqualified. Eleanor Sellman because of the allegations of plaintiff's affidavit which, if true, would create a conflict of interest, and plaintiff (petitioner) because of the strenuous objections raised to her serving as administrator by her sister." (Emph. added.)

The Appellate Division affirmed the order of the lower court and stated in its opinion (Appendix A p. A3):

> "Mrs. Sellman does not appeal from this determination, although she expresses strenuous objections to the appointment of appellant as administratrix."

The "strenuous objections" have never been made known to petitioner and are nowhere in the record.

QUESTIONS PRESENTED

Whether the conduct of the proceedings in the lower court deprived petitioner of her right to due process as contemplated by the Fourteenth Amendment of the United States Constitution:

- Whether the trial judge's announcement before there was a hearing that he would appoint an independent party and his refusal to permit petitioner to testify were a denial of a fair hearing before a fair tribunal.
- Whether respondent Sellman's objections to petitioner's appointment dehors the record and the lack of opportunity for confrontation constituted a denial of due process.

HOW FEDERAL QUESTION WAS RAISED AND PASSED UPON

Trial Court - At the March 7 hearing, petitioner stated:

> "...I have never found out what her objection is.
>
> ...I think this is what the purpose of a hearing is, to be confronted with whatever the accusations are and to be able to respond to them."

Appellate Court - At page 18 of appellant's brief, it was stated:

> "It was thus the contention of the court that a person can be denied an important right - granted by statute without requiring the objecting party to state her objections under oath in court or in an affidavit. This is a denial of due process and is another example of plain error committed by the lower court which has prejudiced appellant's right to fair consideration of her appointment." (Citing cases in support)

Point Heading III of the appeal brief stated:

> THE TRIAL COURT'S PREJUDGMENT OF THE MATTER AND THE CONDUCT OF THE PROCEEDINGS WERE PREJUDICIAL TO APPELLANT'S RIGHT TO A FAIR HEARING

On page 9 of the brief, it was stated:

> "The court's arbitrary decision that appellant would not be permitted to testify at the February 8th hearing also constituted plain error and was a denial of due process.
>
> ...The courts have not condoned such arbitrary denial of due process." (citing cases in support)

The Appellate Division considered and passed on the question in its opinion as follows (See Appendix A p. A4):

> "Appellant also asserts that the trial court has prejudged the matter and she was deprived of her right to a fair hearing. We have canvassed the entire record and find no merit to these contentions. We also find that the other points raised by appellant to be without merit."

REASONS FOR GRANTING THE WRIT

Petitioner has been deprived of her statutory right to administer her deceased mother's estate without due process of law, in violation of the Constitution of the United States, Amendment XIV, Sec. 1.

Petitioner was entitled to and applied for letters of administration under New Jersey Statute, N.J.S.A. 3A:6-4, which reads:

> "If any person dies intestate, administration of the personal estate of such intestate shall be granted to the surviving spouse of such intestate, if he or she will accept the same, and if not, or if there be no such person, then to the next of kin of such intestate, or some of them, if they or any of them will accept the same, and if none of them will accept the same, then to such other proper person as will accept the same."

This Court has stated that the 14th Amendment's protection of property extends to any significant property interest including statutory entitlements. Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983, 1997. It was further stated in Fuentes (92 S.Ct. 1997) that the requisites of due process do not depend upon an advance showing that one will surely prevail at the hearing.

I

PETITIONER DID NOT RECEIVE A FAIR HEARING BEFORE A FAIR TRIBUNAL AS CONTEMPLATED BY THE FOURTEENTH AMENDMENT

This Court has stated that a fair hearing in a fair tribunal is a basic requirement of due process. In re Murchison, 349 U.S. 133 (1955). Petitioner did not receive a fair hearing in a fair tribunal.

As is evident from the transcript, quoted below, the trial judge, from the very outset, demonstrated hostility and his emphatic intent to deny petitioner her constitutional right to due process - the fundamental right to be heard, and in a meaningful manner in a fair tribunal. The trial judge stated he didn't want to listen to any testimony:

January 25, 1974

Mr. Pressler: (p. 2 line 12)	Well, Miss Sidor, whom I represent and who is in court in her filed affidavit with the court has set forth not only certain facts but also the request that the court consider appointing her. She feels that she has no position at loggerheads with the interest of the estate or the interest as an administratrix whereas her sister does.

The Court: (p. 2 line 22 to p. 3 line 24)	Well, you and I have been around quite a while, Mr. Pressler, and if you can find two sisters that can agree on everything after a mother and father dies, particularly about money, it's unusual.
Mr. Pressler:	I think, your Honor, if the Court would, I would like Miss Sidor to be placed on the witness stand.
The Court:	* * * If the other sister opposes her appointment, I will under no circumstances appoint her and vice versa.
Mr. Pressler:	Would the court consider adjourning this until we can formalize the position of the other sister?...
The Court:	I'll adjourn it, but I think in fairness to Mr. Inglima, if he had known she was going to be here today, he would have had the other sister here and then we would have had a real war.
Mr. Pressler: (p. 5 line 22 to p. 6 line 6)	* * * If it can be resolved, your Honor, would we have an opportunity on February 8th to have Miss Sidor testify to give her reasons?

The Court: I'm not going to listen to both of them. I would have to listen to both of them and then it involves one fighting the other. If you and Mr. Inglima can't work it out, I'll appoint a third party and it will be an independent party on the 8th of February. (emph. added.)

On February 8th, as was announced by the trial judge on January 25th, petitioner was not permitted to testify. In fact, when petitioner and her attorney both asked if petitioner could clarify the affidavit, the court did not permit it and proceeded to appoint an administrator.

February 8, 1974

The Court: (p. 6 lines 1-9) In this affidavit, she makes an accusation...

Miss Sidor: Can I clarify that affidavit?

The Court: ...that the sister owes some money...

Mr. Pressler: I thought we might have a response on that, your Honor, we might clear the air on that.

The Court: In addition to the foregoing....

This Court has said in Windsor v. McVeigh, 93 U.S. 274, 277; 23 L.Ed. 914 (1876):

p. 277 "Until notice is given, the court has no jurisdiction in any case to proceed to judgment whatever its authority may be...but notice is only for the purpose of affording

> the party an opportunity of being heard...
>
> p. 283-4 * * * jurisdiction is the right to hear and determine; not to determine without hearing. And where...no appearance was allowed, there could be no hearing or opportunity of being heard and therefore could be no exercise of jurisdiction. By the act of the court, the respondent was excluded from its jurisdiction."

Here, as in Windsor, supra, petitioner, having been denied her right to be heard, had been excluded from the court's jurisdiction. The trial judge decided and announced that he would appoint an independent party before there was any hearing and the hearings were therefore a charade.

II

RESPONDENT SELLMAN'S OBJECTIONS TO PETITIONER'S APPOINTMENT DEHORS THE RECORD AND THE LACK OF OPPORTUNITY FOR CONFRONTATION CONSTITUTED A DENIAL OF DUE PROCESS

Petitioner's appointment as administratrix was made dependent, by the trial court, upon whether or not her sister, respondent Sellman, opposed such appointment:

> The Court: (1/25 p. 3 line 10) If the other sister opposes her appointment, I will under no circumstances appoint her and vice versa. (Emph. added.)

The Court: (1/25 p. 6 lines 1-6) I'm not going to listen to both of them. I would have to listen to both of them and then it involves one fighting the other. If you and Mr. Inglima can't work it out, I'll appoint a third party and it will be an independent party on the 8th of February. (Emph. added)

Yet respondent Sellman never appeared at any of the hearings to testify, nor did she ever submit an affidavit setting forth her objections. Her objections were never specified for the record. And when petitioner protested at the March 7th proceeding that the grounds for respondent Sellman's objections to her appointment were never made known to her, the court replied:

March 7, 1974

Miss Sidor: (p. 9 line 4) ...if she has an objection to me why doesn't she state her objection? Why doesn't she come to court, submit an affidavit so I can respond to it?

The Court: (p. 9 line 5) I don't allow two sisters to come into this court and verbally shout at each other and accuse each other of various things.

Miss Sidor: (p. 11 lines 1-25) * * * I have never found out what her objection is.

...I think this is what the purpose of a hearing is, to be confronted with whatever the accusations are and to be able to respond to them.

The Court: ...I don't think it's necessary. She can object without setting forth reasons.

It was the trial court's contention that a person can be deprived of an important statutory right by the opposition of a party without requiring such party to state the grounds for objection for the record, under oath, in court or even in an affidavit, so they could be responded to. Plaintiff claimed in her appeal brief, submitted to the Appellate Division, at page 18:

> "This is a denial of due process and is another example of plain error committed by the lower court, which has prejudiced appellant's right to fair consideration of her appointment."

citing Giordano v. City Commissioners of the City of Newark, 2 N.J. 585, 589 (1949) where the New Jersey Supreme Court held:

> "No determination can be permitted to rest upon undisclosed findings or information dehors the court. If such could be the parties would be denied the essence of a hearing, they would bw kept in ignorance of the things controlling the actions of the board and due process would be flouted. The rights of the parties can only be protected both in the trial tribunal and on review by a full disclosure on the record of facts relied upon..."

This Court stated in Goldberg v. Kelly, 397 U.S. 254, 268-269; 90 S. Ct. 1011 (1969) that welfare recipients who were not permitted to present evidence orally or to confront or cross examine adverse witnesses were denied due process:

> These omissions are fatal to the constitutional adequacy of the proceeding (at p. 268)
>
> * * * In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross examine adverse witnesses...(at p. 269)

Here as in Goldberg, petitioner was denied the right to confront and cross examine respondent Sellman, whose consent to her appointment was made necessary by the trial judge as stated above.

The New Jersey Supreme Court stated in Mazza v. Cavicchia, 15 N.J. 498, 514-15 (1954):

> Where a hearing is prescribed by statute, nothing must be taken into account...in arriving at its determination that has not been introduced into the record of the hearing. Unless this principle is observed, the right to a hearing itself becomes meaningless...
>
> ...The individual litigant...has a right not only to refute, but...more important to supplement, explain and give a different perspective to the hearer's views of the case.

In Mazza, supra, Mr. Justice Brennan, who was then sitting on the New Jersey Supreme Court, voted with the majority to reverse,

the court finding that the appellant was deprived of his right to due process and a fair hearing because of failure to supply him with a copy of the hearer's secret report, notwithstanding there was sufficient other evidence to support the decision to revoke the license.

Petitioner contends that the New Jersey Appellate Division erred in stating in its opinion (at p. A3 Appendix A infra.):

> Mrs. Sellman does not appeal from this determination although she expresses strenuous objection to the appointment of appellant as administratrix.

The "strenuous objection" was never made known to petitioner and is nowhere in the record.

Petitioner had a right to a fair hearing on her application for appointment and was denied that right. The right to administer an estate is an important right. N.J.S.A. 3A:6-4, supra., does not provide grounds for disqualification. In the very case cited by the Appellate Court in its opinion (Appendix A, p. A2), Cramer v. Sharp, 49 N.J. Eq. 558, 562 (1892), the court granted letters even though the applicant was opposed by his brothers and sisters who accused him of fraud, the court stating those who are entitled by statute have an exclusive primary right to administration

In light of the foregoing, petitioner contends that the New Jersey Superior Court,

Appellate Division, erred in stating in its opinion (Appendix A p. A4):

> Appellant wlso asserts that the trial court had prejudged the matter and she was deprived of her right to a fair hearing. We have canvassed the entire record and find no merit to these contentions.

CONCLUSION

For all of the foregoing reasons, petitioner requests that a writ of certiorari issue to review the judgment and opinion of the Superior Court of New Jersey, Appellate Division.

While the petition sought may not seem important in that it involves the rights of but one litigant, it is important to the public that the requisites of procedural due process in probate matters be established and enforced by the courts. Although the proceedings are relatively informal, the rights adjudicated are important and concern almost everyone at some time.

Respectfully submitted,

Margaret Sidor, pro se
Petitioner
11-43 Hoehn St. Apt. 1-B
Lodi, N.J.

March 1975

APPENDIX A

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2261-73

IN THE MATTER OF THE ESTATE

OF

ANNA SIDOR, DECEASED

Argued September 16, 1974 - Decided Sept. 25, 1974

Before Judges Michels, Morgan and Demos

On appeal from Bergen County Court, Probate Division.

Miss Margaret Sidir, appellant, argued the cause pro se

Mr. Nicholas E. Nasuta argued the cause for appellee, Mrs. Eleanor Sellman (Mr. Robert J. Inglima, attorney)

Mr. Peter W. Till argued thecause for Mr. Gene Schiffman, Administrator appellee (Messrs. Schiffman and Schiffman, attorneys)

PER CURIAM

Margaret Sidor appeals from an order of the Bergen County Court, Probate Division, appointing Gene N. Schiffman, a New Jersey attorney, as Administrator of the Estate of Anna Sidor. The appellant and her sister, Eleanor Sellman, are the daughters and sole heirs of the deceased. Both sought letters of administration for their deceased mother's estate. The court below ultimately ruled that both daughters were disqualified and refrained

from appointing either as administratrix pursuant to the provisions of N.J.S.A. 3A:6-4.

On appeal, Margaret Sidor, among other grounds asserts that she as next of kin had a right to letters of administration prior to that of a stranger in accordance with the provisions of the aforementioned statute.

Under N.J.S.A. 3A:6-4 administration of the estate of an intestate deceased must be granted to the next of kin if she is not subject to personal disqualifying objections. Cramer v. Sharp, 49 N.J. Eq. 558, 560-1 (Ch. 1892); Degnan's Case, 75 N.J. Eq. 197, 201-202 (Prerog. Ct. 1908); In re Tenneson, 18 N.J. Misc. 245, 246 (Mon. Cty. Or. Ct. 1940). If there is a disqualifying objection or where the next of kin is not fit or competent, or has interests adverse and in conflict to that of the estate's or waives or fails to apply for administration, then the court, in the exercise of its discretion, may appoint any fit person to administer the estate. Simoni v. D'Ippolito, 8 N.J. 271, 278 (1951), cert. den. 343 U.S. 928 (1952); In re McFeeley, 10 N.J. 133, 138 (1952); In re Watson's Estate, 64 N.J. Super, 111, 126 (Cty. Ct. 1960), rev'd. 35 N.J. 402, 409 (1961)

Herein, Margaret Sidor's charges against her sister, Eleanor Sellmam, afforded the court a sound basis to disqualify Mrs. Sellman from serving as administratrix. Mrs. Sellman does not appeal from this determination, although she expresses strenuous objections to the appointment of appellant as administratrix. Further, at oral argument, Margaret Sidor reasserted her claim to certain bank accounts jointly held with her deceased mother, which clearly establishes a conflicting interest to that of the estate in these funds. Such adverse claim would seriously impair the impartiality required of an administratrix in the fulfillment of her duties in the administration of the estate. It is abundantly clear that the relationship between the two sisters is characterized by overt hostility, antagonism and distrust and each sister possesses an irreconcilable objection to the other's appointment as administratrix. Under the existing circumstances, the trial court possessed the power to appoint a disinterested person as administrator.

The rule with respect to an appellate court's treatment of a lower court's determination is that, although not bound, the reviewing court will accept the lower court's conclusions where they are supported by substantial credible evidence. State v. Johnson, 42 N.J. 146, 162

(1964); Berzito v. Gambino, 119 N.J. Super 322, 325 (App. Div. 1972), with the reviewing court exercising its original fact finding jurisdiction sparingly and in none but a clear case where there is no doubt about the matter. Donovan v. Gabriel, et al, 57 N.J. Super 542, 553 (App. Div. 1959); Greenfield v. Dusseault, 60 N.J. Super 436, 444 (App. Div. 1960).

We are satisfied that the determination of the court below was well founded.

Appellant also asserts that the trial court had prejudged the matter and she was deprived of her right to a fair hearing. We have canvassed the entire record and find no merit to these contentions. We also find that the other points raised by appellant to be without merit.

In addition to her appeal, Margaret Sidor also fileld two motions. She sought to suppress the brief filed on behalf of the appellee Eleanor Sellman (M-1933-73), herein. We deny the motion although certain extrinsic matters included on behalf of Mrs. Sellman have been removed from consideration. She further sought to strike the brief of the Administrator Schiffman (M-1934-74). The motion is granted due to the fact that on June 12, 1974, we ordered a stay of the court's

order appointing Mr. Schiffman as administrator pending the outcome of this appeal. Therefore, he had no standing in this appeal.

Accordingly, we affirm the order of the court below and vacate the stay of the same heretofore entered.

A TRUE COPY
Elizabeth McLaughlin
Clerk

Robert J. Inglima
Attorney for Eleanor Sellman
P.O. Box 485
7 E. Ridgewood Avenue
Paramus, N.J. 07652
(201) 445-9800

M60673

: BERGEN COUNTY COURT

In Re. ESTATE OF ANNA SIDOR :

Civil Action

:

ORDER

This matter coming on to be heard in the presence of David A. Pressler of the firm of Okin, Pressler & Shapiro, attorneys for Margaret Sidor, and Nicholas E. Nasuta, Esq., of the office of Robert J. Inglima, Esq., attorney for Eleanor Sellman, upon return of an order of this Court on February 8, 1974, directing the said Margaret Sidor to show cause why Eleanor Sellman should not be granted letters of administration and the Court, after hearing argument of both counsel and being of the opinion that the respective attorneys named herein should be appointed as co-administrators of the above captioned estate.

and further, on a rehearing of this matter on March 7, 1974, in light of Mr. Pressler's request of this Court that he be relieved from acting in such capacity, which was heard in the presence of Margaret Sidor, pro se, and Nicholas E. Nasuta, attorney for Eleanor Sellman, and the Court, after duly considering Mr. Pressler's

request and hearing both Margaret Sidor and Nicholas E. Nasuta, and being of the opinion that a disinterested administrator should be appointed in this estate,

It is on this 12th day of March, 1974,

ORDERED, that Gene N. Shiffman, Esq., of 326 Hackensack Avenue, Carlstadt, New Jersey, be and is hereby appointed administrator of the within estate.

It is FURTHER ORDERED, that the said administrator post a bond in the amount of $25,000.00 with the Superior Court.

It is FURTHER ORDERED, that the said Gene Schiffman qualify before the Bergen County Surrogate before acting as administrator.

s/ Roger Breslin

ROGER W. BRESLIN J.S.C.

BERGEN COUNTY COURT
PROBATE DIVISION
Docket No. M60673

In the matter of the :
estate of : Civil Action
ANNA SIDOR, Deceased :

DECIDED

Mr. David A. Pressler, attorney for Margaret Sidor (Messrs. Okin, Pressler & Shapiro, attorneys)

Mr. Robert J. Inglima, attorney for Eleanor Sellman

BRESLIN, R.W., J.S. C. (temporarily assigned)

This matter involves a petition by Plaintiff Margaret Sidor for letters of administration of the estate of Anna Sidor.

Decedent died a resident of Hasbrouck Heights on July 21, 1973, leaving two daughters, plaintiff, who resides in Lodi, and her younger sister, Eleanor Sellman, a resident of Trenton, New Jersey. Decedent's will dated July 11, 1955 named her husband Joseph Sidor, who had predeceased her, as executor. Plaintiff filed a petition to be appointed as Administratrix with

the will annexed of decedent's estate, and said petition was denied probate on the ground that decedent left her entire estate to her husband. Plaintiff then instituted this action to be appointed administratrix of the estate, which is opposed by her sister.

In her affidavit in support of the complaint plaintiff alleges that decedent in fact executed a will subsequent to the will filed for probate in which plaintiff was named executor. She states that decedent told her that plaintiff's sister had borrowed substantial sums of money from decedent which had not been repaid, and that decedent asked plaintiff to take charge of certain papers which decedent kept in a china closet in her home. The key to said closet was in the possession of plaintiff's sister, and plaintiff claims that when her sister finally gave plaintiff the key after plaintiff had requested it numerous times, plaintiff opened the closet and examined the papers it contained. This examination revealed no documents evidencing debts owed to decedent by her daughter Eleanor Sellman and no will was found which named plaintiff as executor of decedent's estate. As an alternative to being named administratrix herself, plaintiff seeks to have the court appoint a disinterested third party as administrator.

A hearing on this matter was held in this court on January 25, 1974. At said hearing the court was informed that Eleanor Sellman, through her attorney, requested the court to appoint an independent administrator. The hearing was adjourned to February 8, 1974 to allow plaintiff to testify and to have defendant appear. At the latter date the court appointed the attorneys for plaintiff and her sister as co-administrators of the estate. Plaintiff has since discharged her attorney, who now seeks to be relieved as a co-administrator. This matter is now before the court for rehearing on the application of said attorney.

N.J.S.A. 3A:6-4 provides as follows:

> Letters of Administration: to whom granted
>
> If any person dies intestate, administration of the personal estate shall ge granted to the surviving spouse of such intestate, if he or she will accept the same, and, if not, or if there be no such person, then to the next of kinof such intestate, or some of them, if they or any of them will accept the same, and, if none of them will accept the same, then to such other proper person as will accept the same.
>
> If such intestate leaves no relations justly entitled to administration of his personal estate, or if his next of kin shall not claim administration within 40 days after the death of such intestate, the superior court or surrogate's court may grant letters of administration to any fit person applying therefor.

A person to be entitled to administration, must, in general, bear some relation to the person over whose estate he seeks appointment. In re DePascale's Estate, 136 N.J. Eq. 99 (E & A 1944). The right to administer is personal to the next of kin and if they fail to apply for or waive such right in favor of someone else, it is for the court to appoint, in its discretion, such proper person as will accept appointment as administrator. Simone v. D'Ippolito, 8 N.J. 271 (1952) cert. denied 343 U.S. 928 (19). When the matter of granting of letters of administration is once properly before the court it may appoint any person, individual or corporate, legally entitled thereto and possessing the necessary qualifications therefor. Simoni v. D'Ippolito, supra; In re Watson's Estate, 64 N.J. Super. 111 (Hudson Cty. Ct. 1960) reversed 35 N.J. 402 (1961); In re McFeely's Estate, 8 N.J. 9 (1951); In re Cresse, 28 N.J. Eq. 236 (Prerog. 1877). In the latter case the court noted:

> The right of the next of kin to administration is personal. They have no right of nomination or selection. If they will not accept administration, it is for the court to appoint, in its discretion, such other proper person or persons as will accept it. 28 N.J. Eq. at 237.

In the case at bar the only two persons who would be entitled to administration are the plaintiff and her sister, Eleanor Sellman. Mrs. Sellman has specifically requested the appointment of an impartial administrator, and plaintiff in her affidavit has made a similar request. Since all those who are entitled to administration have waived their right to it, the court may therefore appoint a third party as administrator. Simoni v. D'Ippolito, supra. Such consent is an essential element of the court's power to grant administration to a stranger to the estate. In re Vealie, 22 N.J. Misc. 284 (Ber. Cty. Surr. 1944).

The appointment of an impartial third party to administer the estate of decedent is especially useful in a situation as is presented in this case, where there are two persons with equal claims to administration and there are questions as to the wisdom of allowing either to administer the estate due to possible conflicts of interest and the nature of the disputes involved. In the absence of an impartial administrator the right of administration would ordinarily, as between several applicants of the same degree of kinship, all else being equal, belong to the older. In re Hill, 55 N.J. Eq. 764 (Prerog. 1897). However, the right to administration as between

such persons is determined also by their fitness and competence and lack of any disqualifying objections. See e.g. In re Messler, 16 N.J. Misc. 434 (Orphans Ct. 1938); In re Mellett, 108 N.J. Super 181 (Hudson Cty. Ct. 1969). In light of the situation in this case as discussed supra. both of the daughters of decedent must be disqualified. Eleanor Sellman because of the allegations of plaintiff's affidavit which, if true, would create a conflict of interest, and plaintiff because of the strenuous objections raised to her serving as administrator by her sister

APPENDIX D

SUPREME COURT OF NEW JERSEY
C-204 SEPTEMBER TERM 1974

In the Matter of the Estate of	:	
	:	ON PETITION FOR
ANNA SIDOR, deceased	:	CERTIFICATION

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Richard J. Hughes, Chief Justice, at Trenton, this 11th day of December, 1974.

s/ Florence R. Peskoe

Clerk